

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 28 Bonds and Insurance

Subject: 28.1 Bonds

PURPOSE: This standard practice (SP) provides the requirements for obtaining and using bonds on Laboratory subcontracts.

POLICY: The Laboratory will obtain bonds from subcontractors in a manner that protects the interests of the government.

SCOPE: This SP applies to all construction subcontracts exceeding \$25,000 and other subcontracts, when appropriate.

DEFINITIONS:

Bid Guarantee A bid guarantee ensures that the bidder will not withdraw a bid during the time specified and will execute a written subcontract and furnish required bonds within the time specified in the bid. A bid bond is a form of bid guarantee.

Bond A bond is a written instrument executed by an offeror or subcontractor (the principal) and a second party (the surety or sureties) to ensure fulfillment of the principal's obligations to a third party (the obligee, i.e., the Laboratory and the government) identified in the bond. If the principal's obligations are not met, the bond ensures payment, to the extent stipulated, of any loss sustained by the obligee.

Payment Bond A payment bond ensures payments as required by law to all persons supplying labor or materials in the prosecution of the work provided for in the subcontract.

Penal Amount The penal amount of a bond or other bid guarantee is the specified maximum amount of money for which the surety is obligated.

Performance Bond A performance bond ensures performance and fulfillment of the subcontractor's obligations under the subcontract.

Surety A surety is an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.

PROCEDURES:

Construction Subcontracts **Subcontracts Between \$25,000 and \$100,000** — For construction subcontracts exceeding \$25,000 but not more than \$100,000, the procurement specialist must select two or more of the following payment protection alternatives, one of which must be provided by the subcontractor:

- A payment bond;
- An irrevocable letter of credit;

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- A tripartite escrow agreement [see FAR 28.102-1(b)(iii)];
- Certificates of deposit from a federally insured financial institution in an acceptable form and executable by the Laboratory; or
- A deposit of the types of security listed in FAR 28.204-1 and 28.204-2.

Particular consideration should be given to inclusion of an irrevocable letter of credit.

Subcontracts Exceeding \$100,000 — Performance and payment bonds are required for all construction subcontracts exceeding \$100,000.

Other Subcontracts

Generally, payment and performance bonds are not required for subcontracts other than construction. However, the use of performance bonds in other subcontracts may be warranted when:

- A subcontractor sells assets to or merges with another concern and the Laboratory wants assurance that the subcontractor is financially capable;
- Substantial progress payments are made before delivery of end items begins;
- A subcontract is awarded for dismantling, demolition, or removal of improvements;
- Doubt exists as to the financial or technical ability of likely suppliers;
- The subcontractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the subcontractor's ability to perform the proposed work;
- Other commitments of the subcontractor might delay performance;
- A delay in performance of the proposed work might disrupt other Laboratory operations and impair the Laboratory's overall efficiency; or
- The item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

A payment bond may be required when there is reason to believe that the work might be delayed because of concern over the credit standing of a proposed subcontractor.

Bonding Requirements

General —All bonds or alternative payment protection, including any necessary reinsurance agreements, must be:

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- Furnished before a Notice to Proceed is issued or before the subcontractor is allowed to start work;
- Provided on the Laboratory's forms; and
- Name the Regents of the University of California and the United States of America as obligee.

Penal Amounts

The penal amount of all performance bonds, payments bonds, and payment protection alternatives must equal 100% of the original subcontract price. If the subcontract price is increased, the penal amount of any performance bond, payment bond, or payment protection alternative will be increased by requiring the subcontractor to either increase the existing amount or obtain additional protection, so that the total penal amount of the protection equals 100% of the increased subcontract price.

Approved Sureties

Corporate sureties must appear in Department of Treasury Circular 570, *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies*, which can be accessed at the following web site:

<http://www.fms.treas.gov/c570/>

Bid Guarantee Requirements

Bid guarantees are generally required when a performance bond or payment and performance bonds are required.

When a bid guarantee is required for a construction subcontract, a bid cannot be considered unless accompanied by a guarantee of at least 20% of the base bid price but not more than \$3 million. This guarantee may be in the form of a certified check, bid bond, cash deposit, or cashier's check. The Laboratory may specify that only bid bonds will be accepted as a bid guarantee.

The Procurement Manager may waive the requirement to obtain a bid guarantee if the Procurement Manager determines that a bid guarantee is not in the best interest of the Laboratory and/or the government.

Noncompliance With Bid Guarantee Requirements

Failure of an offeror to comply with a solicitation requirement for a bid guarantee requires rejection of the bid, except in the situations described in *Waiver of Bid Guarantee Requirement*, below.

Waiver of Bid Guarantee Requirement — Unless the Procurement Manager makes a determination, in writing, that acceptance of an offer would be detrimental to the interests of the Laboratory and the government, failure to comply with a solicitation requirement for a bid guarantee may be waived when:

- Only one offer is received (in this case, the bid guarantee may

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be required before award);

- The amount of the bid guarantee submitted is less than required, but is equal to or greater than the difference between the offered price and the next higher acceptance offer;
- The amount of the bid guarantee submitted, although less than that required by the solicitation for the maximum quantity offered, is sufficient for a quantity for which the offeror is otherwise eligible for award (any award to the offeror must not exceed the quantity covered by the bid guarantee);
- The bid guarantee is received late and late receipt is waived in accordance with the Laboratory's procedures for acceptance of late bids;
- A bid guarantee becomes inadequate as a result of correcting a mistake (but only if the offeror will increase the bid guarantee to the level required for the corrected bid);
- A telegraphic modification of an offer is received without corresponding modification of the bid guarantee, if the modification expressly refers to the previous offer and the offeror corrects any deficiency in bid guarantee;
- An otherwise acceptable bid is submitted with a signed offer, but the bid bond was not signed by the offeror;
- An otherwise acceptable bid bond is erroneously dated or bears no date at all; or
- A bid bond does not list the University and the United States as obligee, but correctly identifies the offeror, solicitation number, and the name and location of the project involved, and is acceptable in all other respects.

Solicitation Requirements

When a bid guarantee, performance bond, and/or payment bond is required, the solicitation must specify:

- The requirement for the bid guarantee and/or bonds;
- The penal amount of the guarantee and/or bond (expressed as a percentage of the subcontract price or as a fixed sum); and
- The deadline for submission of acceptable bonds or other guarantee.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist must:

- Include solicitation requirements for submission of bid guarantees, payment bonds, and/or performance bonds by offerors and subcontractors, as appropriate and
- Review bonds submitted to ensure that they are from

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acceptable sureties, correctly identify all parties to the bond, and specify the appropriate penal amount.

**Procurement
Manager**

The Procurement Manager must determine whether the requirement for a bid guarantee may be waived in appropriate circumstances.

REFERENCE:

Prime Contract Clause I.114 - Contractor Purchasing System, Paragraph (f)